U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FEB 02 2004

FILE: [redacted] Office: MIAMI, FLORIDA Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director for Services, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving moral turpitude. The applicant is married to a legal permanent resident of the United States and has resided in the United States under the Family Unity program since 1989.[1] She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may remain with her spouse and four children, three U.S. citizens and one legal permanent resident, in the United States.

The acting district director concluded that the applicant failed to establish extreme hardship would be imposed upon her legal permanent resident spouse and child and U.S. citizen children if her waiver were denied. The application was denied accordingly.

On appeal, counsel asserts that the decision of the acting district director relies in error on a standard of great actual or prospective injury and the facts of the application satisfy the standard of extreme hardship in light of a recent BIA decision, namely *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002).

The record includes an affidavit of the applicant, dated April 2, 2003; copies of school records for the applicant's children; copies of court disposition documents relating to the arrest and conviction of the applicant; a copy of the resident alien card issued to the applicant's husband; a copy of the approval notice of the applicant's application for voluntary departure under the family unity program; copies of medical records for the applicant's daughter [redacted] an affidavit of the applicant's husband, dated June 1, 2001; letters of support for the applicant; proof of home ownership for the applicant; proof of employment for the applicant and her husband and financial documents and copies of income tax statements for the couple. The entire record was considered in rendering a decision on this application.

The record reflects that:

On December 19, 1999, the applicant as arrested under a single count of welfare fraud in violation of Florida Statute 414.39. The applicant pled nolo contendre and was ordered to pay restitution for the benefits she had fraudulently received.

Section 212(a)(2)(A) of the Act states in pertinent part:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> > (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

[1] The AAO notes that the record indicates conflicting dates of entry of the applicant into the United States ranging from August 1986 to 1999.

. . . .

> (1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-566 (1999), the Board of Immigration Appeals (BIA) provides a list of factors it deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel parallels the circumstances in the present application to those presented in *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002). The AAO notes that in *Recinas*, the respondent was a single mother who provided the sole support for her six children. The *Recinas* respondent sought to establish eligibility for cancellation of removal under section 240A(b) of the Act. *Id.* In the present application, the applicant describes her family as "very close." *See Notice of appeal to the Administrative Appeals Unit (Form I-290B).* In contrast to the *Recinas* respondent, the applicant is married and in addition to the income from her employment, her children benefit from the income earned by their father. The applicant's father resides in the United States as do her siblings, providing further support mechanisms for her children, unlike the children presented in *Recinas*. While the *Recinas* respondent sought cancellation of her removal, the present applicant seeks a waiver of inadmissibility under section 212(h) of the Act rendering the circumstances legally dissimilar.

Counsel contends that relocation to Mexico would prove a hardship to the Gonzalez children as they would be forced to live in a rural community with no opportunity to continue their education. The home of the applicant's mother, where they would live, is located in a remote area of Mexico and is over one hour away from medical care. On the other hand, counsel states that remaining in the United States without the care of their mother would also pose a hardship to the children. *See Affidavit of Maria C. Gonzalez, dated April 2, 2003.* While the applicant asserts that the children should not be unsupervised in their home, the record demonstrates that the applicant and the applicant's husband are both employed full-time leading to the conclusion that the children are alone or supervised by someone other than the applicant at times. *See Affidavit of Jose Gonzalez, dated June 1, 2001.* The record does not establish that the applicant is the only person able to care for the children when they are not in school and the record does not demonstrate that the applicant is the only person who can obtain medical care for Jessenia Gonzalez when the child suffers from nosebleeds. *See Clinical Records for Jessenia Gonzalez.*

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be

expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's husband and children will endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record reflects that the applicant has failed to show that her U.S. citizen spouse and children would suffer extreme hardship if her waiver application were denied. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2)(A) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.